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WILLIAM J. SMITH
Attorney At Law

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ALL CORRESPONDENCE TO: POST OFFICE BOX 6655 - SANTA ROSA, CALIFORNIA 95406
OFFICES LOCATED AT: 6400 REDWOOD DRIVE, ROHNERT PARK, CALIFORNIA 94783
TELEPHONE (707) 584-7550 TELEFAX (707) 586-9569

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June 24, 1991

Federal Communications Commission
Office of The Secretary, FM Branch
1919 M Street
Washington, D.C. 20554

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AUDIO SERVICES
DIVISION

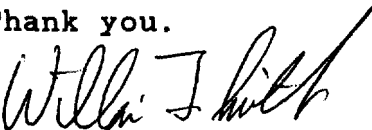
Re: Reply to Beckwith's Opposition
to Petition to Deny

To Whom It May Concern:

Enclosed for filing are the original and two (2) copies of Reply
to Beckwith's Opposition to Petition to Deny.

Please return a file-stamped copy to me in the enclosed self
addressed stamped envelope.

Thank you.


WILLIAM J. SMITH

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RECEIVED
JUN 27 1991
FM EXAMINERS

1
2 Before the
3 FEDERAL COMMUNICATIONS COMMISSION
4 Washington, D.C.

5 In Re Application of

6 BECKWITH COMMUNICATIONS, INC.

File No. 910211MI

7 Application For FM
8 Construction Permit for New
FM Channel 240A, 95.9 mHz
Healdsburg, California

9 To: Secretary,
10 FM Branch

11 REPLY TO BECKWITH'S OPPOSITION TO
12 PETITION TO DENY

13
14 1. The Opposition to Petition to Deny filed by Beckwith
15 Communications, Inc. ("Beckwith") concentrates on distinguishing
16 the Beckwith tower proposal from the tower proposal of KHTT, which
17 was denied last year by the County of Sonoma. Thus, Beckwith
18 points out that its tower would be "only" 80 feet high instead of
19 407 feet high, would be made out of wood instead of metal, would
20 not have flashing lights, etc.

21 2. All this is well and good, but faced with the recent
22 precedent of denial of a nearby application on property sharing
23 the same zoning and general plan land use designations, Beckwith
24

1 cannot prevail simply by showing how its tower differs from the
2 denied tower. Rather, Beckwith must show how its proposal meets all
3 of the conditions required by the General Plan. That is, an 80
4 foot high, non-lighted wooden tower may be better environmentally
5 that a 407 foot high, lighted, metal tower, but the question is can
6 any tower at all be legally approved under the Sonoma County
7 General Plan.

8 3. As we pointed out in the Petition to Deny (p.5) the crux
9 of the matter is that the County of Sonoma must deny a tower
10 application as being inconsistent with the General Plan if there
11 are feasible, alternative sites which have "fewer or less severe
12 environmental effects". The objective is to avoid a proliferation
13 of tower sites throughout the county by clustering towers. There
14 are existing tower facilities in Sonoma County for both
15 broadcasting and communications. An existing site must, by
16 necessity, have "fewer or less severe environmental effects" than
17 a new tower site in virgin wilderness.

18 4. The threshold question, then, is has Beckwith shown that
19 there are no feasible alternative sites which are already
20 developed? Clearly not. Another applicant, Healdsburg
21 Broadcasting Co., has designated its site at Mt. Jackson, on an
22 existing, developed site. If Mt. Jackson is a feasible site, it
23 inexorably follows that applications in undeveloped areas -
24

1 Beckwith's included - must be denied. But Beckwith does not claim
2 that Mt. Jackson is not feasible. Rather, Beckwith claims only
3 that Mt. Jackson is "short-spaced" and states that the applicant
4 "has employed a directional antenna to avoid the short-spacing
5 problem". Although Beckwith goes on to assert that "only minimal
6 city grade coverage" will result, Beckwith does not allege that the
7 Mt. Jackson site is not feasible, even assuming the correctness of
8 Beckwith's factual assertions.

9 5. Further, as pointed out on the Petition to Deny, there are
10 also existing communications towers on Mt. St. Helena and Geyser
11 Peak. Neither of these sites is even mentioned in Beckwith's
12 opposition or claimed to be not feasible.

13 6. Nor has Beckwith analyzed the feasibility of other sites
14 either in the City of Healdsburg itself or in surrounding areas
15 which could have fewer or less severe environmental effects than
16 the wilderness site it has chosen. In this connection, Beckwith
17 admits that it found an existing cellular tower site which met its
18 requirements, but did not pursue it because the "tower agent" did
19 not return phone calls (Opposition p. 6). This is not a sufficient
20 effort: why did Beckwith not write the property owner directly?

21 7. The underlying flaw of Beckwith's argument is its assumed
22 standard of an "optimum" site from an engineering point of view,
23 whereas the legal standard required by the County of Sonoma's
24

1 General Plan is that there be no other "feasible" sites. Clearly,
2 what is "optimum" from an engineering perspective may well be less
3 than optimum from an environmental perspective. The "optimum"
4 tower site for a station serving Yosemite Valley, to an engineer,
5 might well be on top of the Half Dome, for example. But if there
6 is a developed site in Sonoma County which is "feasible" (even
7 though possibly not "optimum"), an application for a site on
8 undeveloped land in rural Sonoma County must be denied. This
9 remains the crux of the Petition to Deny.

10 8. Finally under California law, zoning decisions must be
11 consistent with the general plan (Government Code Section 65860),
12 including use permits. Neighborhood Action Group V. County of
13 Calaveras (1984) 156 Cal. App. 3d 1176. Because the Petition to
14 Deny has shown inconsistency between the Beckwith proposal and the
15 General Plan, the Beckwith tower could not be validly approved even
16 if the County of Sonoma inexplicably ignored its General Plan.
17 That is, it would be subject to judicial attack under state law.

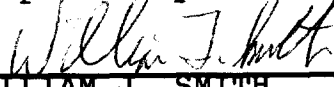
18 CONCLUSION

19 9. The Petition to Deny demonstrated that Beckwith's chances
20 of obtaining local approval are improbable. Beckwith's Opposition
21 has done nothing to refute that showing. The Petition to Deny
22 should be granted.
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Dated: June 24, 1991

Respectfully Submitted,


WILLIAM J. SMITH
Attorney at Law
In Propria Persona
P.O. Box 6655
Santa Rosa, CA. 95406

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PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Sonoma, California. I am over the age of 18 years and am not a party to the within action. On June 24, 1991, I served the attached REPLY TO BECKWITH'S OPPOSITION TO PETITION TO DENY by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service Office, Santa Rosa Main Branch, Santa Rosa, California, addressed as follows:

Mario Edgar Deas
126 Mill Street
Healdsburg, CA. 95448

George L. Lyon, Jr., Esq.
Lukas, McGowan, Nace & Guttierrez
1819 H Street N.W.
Suite 700
Washington, D.C. 20006
Attorneys for Linda D. Beckwith

Michael Couzens, Esq.
385 8th Street, 2nd Floor
San Francisco, CA. 94103
Attorney for Dragonfly
Communications, Inc.

Lee W. Shubert, Esq.
Haley, Bader & Potts
Suite 600
2000 M Street, N.W.
Washington, D.C. 20036-3374
Attorneys for Deas
Communications, Inc.

I, EILEEN C. KISSANE certify under penalty of perjury that the foregoing is true and correct.

Executed on June 24, 1991, at Rohnert Park, California.


EILEEN C. KISSANE